United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT 300

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

555

No. 22181

JOHNNY JOHNSON
Appellant.

v.

UNITED STATES OF AMERICA
Appellee.

Appeal From the United States District Court
For the District of Columbia

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Appointed by this Court.

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STATEMENT OF ISSUES PRESENTED FOR REVIEW.

(1) Did the evidence before the Court below show that the arrest and search of the appellant was valid permitting denial of appellant's motion to suppress and the subsequent conviction of appellant for the crime of carrying a deadly weapon.

(2) This case has not previously been before this Court.

STATEMENT OF THE CASE.

Appellant hereinafter referred to as the defendant was tried by the Court below after a waiver of a jury trial, for carrying a deadly weapon, was convicted and sentenced to a term of imprisonment of from 16 months to 4 years.

Testimony at the trial showed the following. In the afternoon of October 12, 1967, a Thursday, a robbery of the J. & E. Liquor Store located at 3914 - 14th Street, N. W., Washington, D. C. was reported to the District of Columbia Metropolitan Police Department. The police radio dispatcher broadcast a call over the police radio stating that the robbery had occurred, that two negro males were involved and that a black Thunderbird automobile bearing D. C. license tag No. 337-918 was used by the robbers. Detective Sergeants Eurtell M. Jefferson and Glenn A. Hilton in cruiser 332 heard the call at 3:50 p.m. and in due course were informed that the owner of the automobile was listed as living at 1304 Emerald Street, N.E., Washington, D. C. These detectives asked through the police dispatcher if the officer at the scene of the robbery wanted them to go to the Emerald Street address to see if the automobile was there. They were told to proceed there for that purpose. On arriving at Emerald Street at about 5:20 p.m. the officers found the unoccupied car in question parked in front of 1307 Emerald Street, N.E. Detective Jefferson so informed the dispatcher of this fact and the detectives were told to keep the car under surveillance while another

cruiser arrived on the scene and while the officers had the Thunderbird under surveillance four negro males came out of 1304 Emerald Street N. E., or nearby and started getting into the Thunderbird. Detective Jefferson so informed the dispatcher and was told that the other cruiser was nearby. The detectives drove up and blocked the Thunderbird, got out of their cruiser, at least one of them drew a gun and ordered the occupants of the Thunderbird to get out. The occupants were searched by Detectives Jefferson and Hilton with the help of other officers who had arrived at the scene and defendant who had been sitting in the front right hand passenger's side was found to have a pistol in the waistband of his trousers.

The original broadcast concerning the robbery gave a description of the robbers, stated that there were two of them and that one of them was armed. (Tr. 18 and 19). Detective Jefferson stated that he did not take down the physical description of the robbers, though he did make note of the license number of the car, its description and other information. The testimony of the detectives shows that they made no attempt to obtain a description of the persons believed to have been involved in the robbery prior to stopping the car and arresting all four occupants. Their testimony demonstrated that prior to the arrest they made calls to the police radio dispatcher and received information and instructions from him.

ARGUMENT.

Counsel for defendant requests that the Court read pages 7 through 58 of the transcript of the proceedings by Elaine C. Wells in connection with the argument.

The only issue of fact or of law tried to the Court below was that of the validity of the search of the defendant during which a pistol was found in the waistband of his trousers. For this reason defendant's counsel at the trial below and the defendant waived jury trial. Defendant contends that the testimony adduced shows that the arrest of the defendant without a warrant and the search which immediately occurred were not lawful.

A valid arrest without a warrant if for a misdemeanor must be for one which occurred in the presence of the arresting officer and for a felony must be in circumstances where the arresting officer had reasonable grounds to believe that a felony had been committed and that the persons arrested committed it. The purpose of Detective Hilton in approaching the Thunderbird, asking defendant to get out and searching him was for "the purpose of arrest for the holdup of this liquor store." (Tr. 45) It appears that the defendant was arrested for the felony of robbery where a gun was used.

In order for the search which took place here to be lawful it would have had to meet the Fourth Amendment Standards of Probable Cause. "Probable Cause is a plastic concept whose existence depends on the facts and circumstances of the particular case." And the substance

of all definitions of probable cause is reasonable ground for belief of guilt. Bailey v. U. S. ___ D. C. Appeals ___; 389 Fed. 2d 305, 308(1967). The detectives had been informed several times in their many conversations with the police dispatcher that a robbery of the J. & E. Liquor Store had occurred, the method of perpetration of the crime was described, the men who were believed to have committed the crime were described, and the automobile used in the crime had been identified and described. The crucial question is whether or not a reasonable cautious and prudent police officer would have reasonable grounds for a belief that the defendant was guilty of the crime when arrested.

The arrest and search cannot be upheld because it turned up a pistol "and search is not to be made legal by what it turns up. In law it is good or bad when it starts and does not change the character from its success." U.S. v. DiRe 332 U. S. 581, 593 (1947). The standard for probable cause is as high where there is a warrant as where there is none. Bailey v. U.S., supra at 308. Defendant contends that the arresting detectives in this case did not have probable cause to arrest the defendant for the robbery of the J. & E. Liquor Store.

In Bailey v. U. S., supra, a case which is very similar to the present one, a robbery occurred at about 5 p.m. in Washington, D. C. It was reported to the police that the robbery had occurred; that three negro males had participated and that they had escaped in a 1953 or 1954 blue Chevrolet hardtop. This information was broadcast by the police dispatcher about 5:20 p. m. and a blue Chevrolet hardtop with

four negro males in it was spotted by the police about 3.7 miles from the scene of the crime. The car was being driven in heavy traffic away from the scene of the crime and at 5:40 p.m. it was stopped by the police and its occupants were arrested and searched. They were all four convicted of the robbery and appealed. The conviction was upheld with Judge Leventhal concurring in a vigorous opinion. Judge Leventhal thought that the officers had sufficient reasonable ground to be suspicious of the occupants of the automobile to stop it though not enough to arrest them at that time. Judge Leventhal found that when the officers after stopping the automobile saw on the front floor boards a brown leather wallet of the type described in the broadcast as having been stolen in the robbery, asked who it belonged to and received no answer that probable cause for arrest was established at that time. In the present case no fruits of the crime were seen by the arresting detectives prior to the arrest.

The opinion of the Court in Bailey v. U.S., supra, held that the police officers in that case had probable cause for arrest when they stopped the automobile. The majority reached this conclusion because they (a) had a description of the automobile and a general description of the occupants, (b) the car was a reasonable distance from the scene of the robbery and was fleeing, and (c) the police were quite certain they had the right men. The Court did not find the arrest of four men rather than three to be significant since the fourth man could

have been reasonably supposed to have been a lock-out waiting in the car while the others committed the crime. Bailey v. U. S., supra, at 308. The three passengers in the blue Chevrolet were the defendants in that case whose clothing was identified by the victim in a police line-up as having resembled that worn by his assailants.

The Court in its opinion in Bailey emphasizes that the car involved there was fleeing and that if it had not been stopped the identity of the occupants might never have been ascertained. Speed in making the arrest was essential in the circumstances of that case. The element of flight in a vehicle from the scene of the crime "tipped the scales in favor of probable cause." Bailey v. U. S., supra, at 309.

The defendant contends that under the standards set forth in the Court's opinion in Bailey and in the concurring opinion the detective did not have probable cause for his arrest. The concurring opinion found probable cause only after the police had seen the stolen wallet on the floor boards of the car and had not been answered when they asked who it belonged to. Nothing was found in the Thunderbird here. It is clear that arrest of the defendant did not meet the standards of probable cause in the Bailey concurring opinion.

It is equally clear that the arresting detective did not have probable cause to arrest defendant here under the standards set forth in the Court's opinion in Bailey. The occupants of the Thunderbird were not fleeing since the detective stated that the car was not moving. It could

not move since it was blocked by the police cruiser (Tr. 20). There was not just one person in the car then, the number reported as having committed the robbery, but two and the defendant here was not in the driver's seat. Although the dispatcher had broadcast a description of the robbers, the arresting detectives had not taken note of it and were looking for two negro males. There is nothing here to tip the scales in favor of probable cause. As Judge Leventhal stated in the concurring opinion:

> "The Court finds probable cause to arrest as of the time the car was stopped. Yet at that time all the police knew was that the car and its occupants were a very rough match to those involved in a robbery four miles away from where the car was first sighted. It was rush hour, with traffic at its heaviest in a poor area of the city, where old cars are relatively numerous. There was nothing suspicious about the way the occupants of the car behaved. I am unwilling to say that any group of three or four Negroes who happened to be riding in an old Chevrolet on that day in a fifty square mile area can without more be searched, booked, and stigmatized by an arrest record regardless of whether they could explain the whole thing away if given an immediate chance. Yet all of these are permissible police actions, if there was probable cause for arrest." Bailey v. U.S., supra, at 312."

Persons in a car reported to have been used in a robbery could arouse probable cause for arrest only if the person in the car was in some way identified as one who was probably guilty of committing a crime. Presence in the automobile alone could not under the circumstances of

this case support a reasonable belief that defendant had committed the robbery in question. "Presumptions of guilt are not lightly to be indulged in from mere meetings." U.S. v. DiRe, supra, at 593. Mere presence in a car with persons convicted of a robbery within the hour or so after the commission of a crime alone cannot support conviction for the robbery. Goodwin v. U.S. 121 U.S. App. D. C. 9, 11, 347 Fed.2d. 793, 795, nor can it establish probable cause.

Whether or not the arresting detectives themselves reasonably believed that all of the occupants of the Thunderbird were guilty of the robbery of the J. & B. Liquor Store is shown by their testimony. Detective Jefferson testified that he was informed by the police dispatcher that two negro males were involved in the robbery, one who drove the car and one who entered the J. & B. Liquor Store and robbed it (Tr. 12). Detective Hilton's testimony was the same and he stated that they did not believe that all of the four occupants of the Thunderbird were guilty of the crime for which they were arrested and searched.

When the arresting detectives approached the Thunderbird the officers apparently told the occupants that they were police officers and ordered them to get out then immediately searched them all before asking any questions or taking other actions which could have connected anyone of the occupants with the robbery (Tr. 12, 30, 33. 53). There is a question as to whether or not the officers'actions were inspired by concern for their safety. DetectiveJefferson testified that one or two additional police cars were at the scene as well as a patrol wagon; that

he did not have his gun drawn and did not recall Detective Hilton having his gun drawn (Tr. 33). There was in this case no emergency situation requiring immediate police action. Two of the occupants of the Thunderbird including the defendant were later cleared of the robbery.

The evidence shows that the arresting detectives in this case did not have probable cause to arrest the defendant.

CONCLUSION.

The arrest and search of the defendant were unlawful and use of the pistol found on him during the search should have been suppressed by the Court below. Defendant's conviction was improper and he requests that it be reversed.

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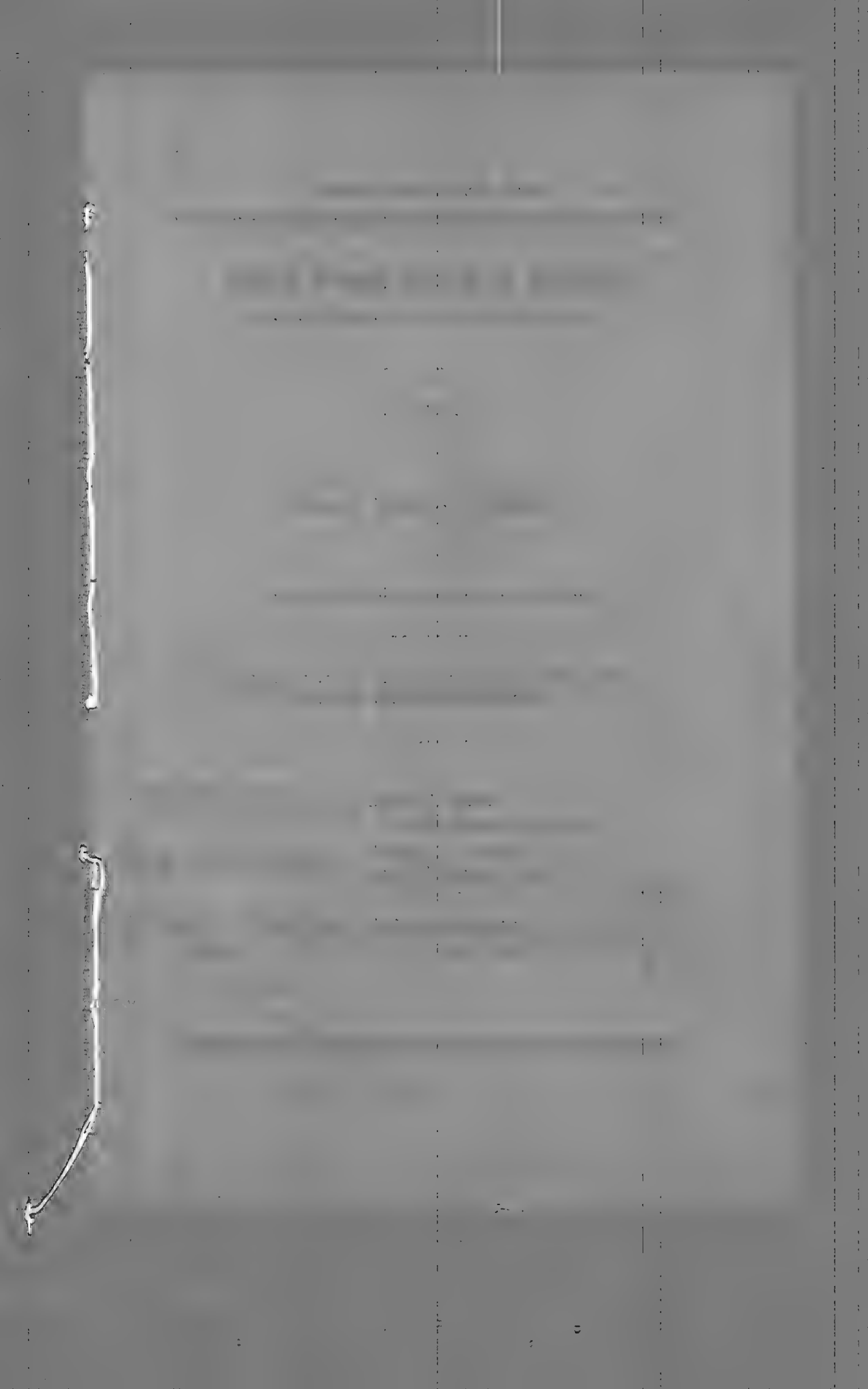

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OTHER REFERENCES

* Cases chiefly relied upon are marked by asterisks.

ISSUE PRESENTED *

In the opinion of appellee, the following issue is presented:

Was the police conduct in restraining and searching appellant, under all the circumstances of the case, reasonable and justifiable, where:

(a) the police officers by radio notice knew that a fresh robbery at gunpoint had been perpetrated by at least two negro males and that they had used a getaway car of known make and license tags, and

(b) the officers knew also by radio notice the address of the registered owner of the getaway car and responded to that location, and

(c) the officers, upon arriving at that location 1½ hours after the robbery, saw the identified car parked in front of the designated address and saw four negro males come from the address, get into the car, and make ready to drive off, and

(d) the officers, before the four persons drove away, approached the car, told the four to get out and searched them for weapons, finding a loaded and operational revolver on appellant?

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* This case has not been previously presented to this Court under same or similar title.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,121

JOHNNY JOHNSON, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

In September, 1967 appellant was indicted for carrying a dangerous weapon in violation of 22 D.C. Code § 3204. Appellant was tried by the court on April 11, 1968, Judge Smith presiding, and found guilty as charged. He was sentenced on June 14, 1968 to a term of sixteen months to four years. This appeal followed.

Prior to trial, on April 1, 1968, appellant filed a motion to suppress evidence seized as a result of the search of his

person on October 12, 1967.[1] In view of appellant's acknowledgement to the trial court at the commencement of the proceedings that "the only issue in this case is the validity of the search of the defendant," that motion was considered contemporaneous with the trial on the merits. (Tr. 3-6.) During the course of that trial it was developed that at about 3:50 p.m. on October 12, 1967, an armed robbery was committed by two negro males at the J and B Liquor Store, 3914 Fourteenth Street, Northwest. Based on information obtained from witnesses to that offense, a general "lookout" broadcast was transmitted over the police radio.

This initial transmission was received and heard by Detective Sergeants Burtell M. Jefferson and his partner, Glenn A. Hilton, while they were cruising in their squad car in the northeast section of the city. Both officers testified at appellant's trial and related that at approximately 3:50 p.m. on October 12, 1967 they heard a radio "lookout" alerting police officers that two negro males had participated in a robbery at the said J and B Liquor store, that at least one of the subjects brandished a revolver and they obtained a certain amount of money, whiskey and beer. (Tr. 7-8, 15-18, 22-23, 42-46, 48.) There was also a rather general description of the subjects and a detailed report of the automobile they fled in along with a particular license tag reference (Tr. 15-16, 18-19, 22-23, 43, 48). With respect to this inaugural broadcast the officers recited that while they did not take note of the general description of the robbers exactly as it was broadcast,[2] they did know

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[1] The request for suppression included the following:

(1) A pistol.
(2) A quantity of money in the sum of $40.
(3) Any other items seized as a result of the search.
(4) Any statements or admissions made by the [appellant] at the time of the arrest but before the [appellant] had been taken before a committing magistrate.

[2] Detective Hilton's account of that information is relevant here (Tr. 48):

[Footnote continued on page 3]

that at least two negro males were involved, one was armed, and that they escaped in a black Thunderbird bearing District of Columbia license tag number 337-918 (Tr. 19, 23, 43).

Subsequent to the initial "lookout", at approximately 5:10 p.m., there was a supplemental radio dispatch advising that the black Thunderbird, identified as the getaway vehicle in the J and B Liquor robbery, was registered to one Francine Lantion, 1304 Emerald Street, Northeast (Tr. 8-11, 24-25, 35-37, 43, 55). Overhearing this communication, Officers Jefferson and Hilton informed the dispatcher of their proximity to that address and were, in turn, instructed to respond to that location and impose a surveillance (Tr. 7-8, 25-26, 35, 50).

The officers arrived at the Emerald Street location at approximately 5:20 p.m. and observed the automobile in question, the black Thunderbird with District of Columbia tag number 337-918, unoccupied and parked in the immediate vicinity of the listed address (Tr. 9-11, 23, 26, 37, 44, 50, 55). This information was relayed back to the dispatcher who directed the officers to maintain their surveillance until additional patrol cars were summoned to the area and to hold anyone that might return to or enter the vehicle (Tr. 11-12, 37, 44). Within a few minutes after receiving these instructions Officers Jefferson and Hilton observed four negro males leave the premises at 1304 Emerald Street, Northeast, or thereabouts, and enter the designated vehicle (Tr. 12, 27-29, 37-38, 44, 51-52). After informing the dispatcher of these events and upon being advised that another cruiser was approaching the scene, Officers Jefferson and Hilton moved to stop the persons in the getaway car (Tr. 12, 27, 31, 38).

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[2] [Continued]

Q. Do you recall if there was any description of the people involved in the liquor store robbery?

A. Yes, sir.

Q. All right. Will you tell us what you can recall.

A. The subject was wearing a dark color sweater or jacket and, of course, he was a Negro male. But this is about the most that I recall from the description.

Detective Hilton stated that before the occupants had an opportunity to start and operate the parked vehicle the officers maneuvered their cruiser to block off any possible path of departure. The officers then approached the occupied vehicle, Detective Hilton with his gun in hand, and ordered the occupants, one of whom was appellant, to leave the vehicle, advising them that they were suspects in a robbery holdup of a liquor store. (Tr. 12, 19-21, 30-32, 38, 53-54, 56.) Based on the information that these occupants were suspects in an armed robbery, the officers instituted a preventive search for possible weapons (Tr. 9-10, 44-46, 54).[3] The evacuation of the occupants and the ensuing weapons search was accomplished with the aid of Officers Linn and Gray, who had just arrived at the scene (Tr. 13, 29-33, 38-40, 44). Detective Hilton stated that each officer was responsible for one of the occupants and that he searched appellant, who had been sitting in the front passenger position of the car, and in the course of

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[3] The following colloquy between Detective Jefferson and Mr. Schoenfeld, the prosecuting attorney, explains the basis for this search of the occupants (Tr. 20-21):

> Q. All right. Now at the time that you got the men out of the car I would like to ask you, sir, what was the purpose in your mind in asking the men to step out of the vehicle?
>
> A. Well, with the information that the subject that had perpetrated this robbery was armed, it was to get the individuals out of the car and to search them for any weapons they might have in order to protect ourselves, just in case they were armed at that point.
>
> Q. Did you have any information at the time that you actually pulled up on the car which of the men might be armed or which might not be armed?
>
> A. No, sir, I did not, other than the sketchy description that was broadcast over the police radio.

In response to a similar inquiry on cross-examination, he further elaborated (Tr. 29):

> A. I will put it this way. Based on the information concerning the robbery, the fact that one of the individuals was armed, and that they went to this particular automobile that had been mentioned in the lookout, I felt that one of the four could possibly still be armed.
>
> Q. But you didn't know which one?
>
> A. No, sir, I did not.

that search discovered and removed from appellant's waistband a .32 caliber revolver that was loaded and operational (Tr. 13, 32, 38-40, 45-46, 54). This weapon was eventually identified and introduced into evidence at trial as Government Exhibit #4 along with the relevant certificate of non-registration (Government Exhibit #3) (Tr. 39-40; Tr. (Vol. II) 2). No other weapons were found.[4]

SUMMARY OF ARGUMENT

The nature and type of restraints imposed by the police officers were, under the circumstances of the case reasonable and justifiable in light of the standards contemplated by the Fourth Amendment and recently espoused by the Supreme Court in *Terry* v. *Ohio*, 392 U.S. 1 (1968). Whether or not the arresting officers had probable cause to arrest appellant (a question unnecessary to reach under this approach), it cannot be doubted that they possessed enough information, and the circumstances were such, as to warrant their initial investigatory exercise of custodial restraint and control over the occupants of the vehicle specifically identified as the getaway car in the armed robbery. Their conduct in this regard was entirely consistent with the well established concept that where automobiles or other things readily moveable are involved in criminal activity the "exigencies of the situation (make this police) course (of action) imperative", *McDonald* v. *United States*, 335 U.S. 451, 456 (1948).

The succeeding search of the occupants of that vehicle was no less justifiable. The testimony elicited at trial reflects that the officers were acutely aware that the aforementioned automobile was involved in a robbery at gunpoint and that the primary purpose of the ensuing search of the occupants was to insure their own safety. It cannot be disputed that the officers could reasonably believe they

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[4] Two of the other occupants of the vehicle, Mr. Cromartie and Mr. Spencer were subsequently charged with the armed robbery of the liquor store. The fourth occupant, Mr. Wilson, was released (Tr. 41).

were confronted with a potentially dangerous situation where their own safety and the safety of others was in jeopardy and they could properly issue commands and take precautions which reasonable men would be warranted in doing. It is in this light that they conducted a limited search for weapons which ceased as soon as that objective was safely accomplished. The activity of the police officers under the circumstances of this case "was justified at its inception, and . . . was reasonably related in scope to the circumstances which justified the interference in the first place." *Terry* v. *Ohio*, 392 U.S. 1, 20 (1968).

ARGUMENT

The conduct of the officers, under the circumstances of this case, was reasonable and justifiable and in no way derogated appellant's Fourth Amendment rights.

(Tr. 7-13, 15-33, 35-40, 42-48, 50-56)

Appellant contends "that the testimony adduced shows that the arrest of the defendant without a warrant and the search which immediately occurred were not lawful" (Appellant's Br. 3). Appellant's argument here, predicated on the assertion that there was no probable cause to justify his arrest and institute a search incident to that arrest, completely ignores the recent Supreme Court decision in *Terry* v. *Ohio*, 392 U.S. 1 (1968), which specifically rejected the notion that it is always unreasonable for a policeman to seize a person and subject him to a limited search for weapons unless there is probable cause for an arrest. That decision, we submit, controls the case at bar.

In arriving at that determination the Supreme Court focused on the central inquiry under the Fourth Amendment—"the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Id.*, at 19. The question of reasonableness, they said, "is a dual one—whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Id.*, at 19-20.

Preliminarily "the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.*, at 21. Applying this principle to the instant case, the record reveals that Detectives Jefferson and Hilton had abundant reasonable grounds to believe that the occupants of the suspected vehicle, one of whom was appellant, were involved in the liquor store robbery. The critical facts are these. Through a series of official police communications the arresting officers knew that an armed robbery had been committed at approximately 3:50 P.M. on October 12, 1967, by at least two negro males, of vague description, who made their getaway in a Black Thunderbird bearing District of Columbia tag number 337-918 (Tr. 7-8, 15-19, 22-23, 42-48). In a supplemental dispatch received at about 5:10 P.M. the officers learned the name and address of the registered owner of the getaway car and were instructed to report to that address and set up a "lookout" (Tr. 7-11, 24-26, 35-37, 43, 50, 55).

Shortly after their arrival at that setting at approximately 5:20 p.m., the arresting officers observed four negro men leave the immediate area of the designated premises and enter the getaway vehicle (Tr. 9-12, 23, 26-29, 37-38, 44, 50-52, 55). Before the vehicle had an opportunity to be started and removed from its parked position, the officers blocked the car and ordered its occupants out (Tr. 12, 19-21, 27, 30-32, 38, 53-54, 56).

Thus, considering that the arresting officers had knowledge of the robbery, a specific description of the getaway vehicle including a precise license tag reference and a vague description that two negro males perpetrated the crime and that the officers subsequently observed four negro males enter the same vehicle parked almost directly adjacent to the registered address only 1½ hours after the crime, and observed them prepare to depart, we submit they had abundant reasonable grounds to believe that at least two of the occupants, if not all, were involved in the

armed robbery, and the propriety of their initial investigatory action is unassailable.[5]

The succeeding search of the occupants of that vehicle was no less justifiable. The testimony elicited at trial reflects that the officers were acutely aware that the aforementioned automobile was involved in a robbery at gunpoint and that their primary concern for their safety prompted them to conduct a weapons search of the occupants (Tr. 9-10, 20-21, 44-46, 54). When viewed in this overall factual context, it certainly cannot be disputed that the officers were justified in believing that the occupants of the suspected getaway vehicle, who were being investigated at close range, were armed and presently dangerous to the officers and others. In these same circumstances, the Supreme Court, in *Terry*, recognized that "we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest", and "it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm." *Id.* at 24.

The search of appellant and the other occupants of the identified getaway vehicle was specifically employed for that limited purpose and once that objective was safely accomplished their exploration immediately ceased. It follows, therefore, that the activity of the police officers under the circumstances of this case "was justified at its incep-

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[5] The element of flight has been recognized as a substantial consideration in the determination of reasonable police conduct and is derived from the well established concept that where automobiles or other things readily moveable are involved in criminal activity the "exigencies of the situation (make appropriate police) course (of action) imperative." See, *McDonald* v. *United States*, 335 U.S. 451, 456 (1948); *Carroll* v. *United States*, 267 U.S. 132 (1925). This is especially true where, as here, the vehicle itself was positively identified as an instrumentality of the crime. See, *Carroll* v. *United States; supra; United States* v. *Ventresca*, 380 U.S. 102, 107 n.2 (1965); see also *Preston* v. *United States*, 376 U.S. 364, 366-7 (1964) and *Johnson* v. *United States*, 333 U.S. 10, 14-15 (1948).

tion, and . . . was reasonably related in scope to the circumstances which justified the interference in the first place." *Id.* at 20. *Cf.*, *Sibron* v. *New York*, 392 U.S. 40 (1968). Accordingly, this case falls squarely within the narrowly drawn authority which permits "a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime." *Id.* at 27. Since this limited search was reasonable under the standards of the Fourth Amendment, the .32 caliber revolver, discovered and seized from appellant's waistband during the course of that search, was properly admitted into evidence at trial.

Even when viewed in the traditional analysis of "arrest" and "probable cause", it cannot seriously be questioned that the arresting officers properly exercised their discretion and authority within the well defined constitutional limitations of the Fourth Amendment. It has become axiomatic that a search made incident to lawful arrest is permissible even without a warrant. *Weeks* v. *United States*, 232 U.S. 383, 392 (1914). However, the arrest which sanctions this search is lawful only if the Fourth Amendment standard of probable cause is present prior to the commencement of that search, *Beck* v. *Ohio*, 379 U.S. 89, 91 (1964); *United States* v. *Di Re*, 332 U.S. 581, 595 (1948), and, probable cause for arrest exists when the arresting officer has reasonable grounds to believe that a crime has been committed and that the person arrested has committed it. *Carroll* v. *United States*, *supra*, 267 U.S. at 162, *Williams* v. *United States*, 113 U.S. App. D.C. 371, 372, 308 F.2d 326, 327 (1962).

The arrest involved in the case at bar was the direct consequence of a robbery which occurred at the J and B Liquor store on October 12, 1967. Appellant does not contest, and the record shows that the arresting officers had full knowledge of that event prior to the time of arrest (Tr. 7-8, 15-19, 22-23, 42-48). Therefore, the only issue presented in this appeal is whether the arresting officers

possessed adequate information, under the circumstances, to place appellant under arrest for that crime and to search his person incident thereto. That probable cause was indeed existent at that time is eminently clear when this information is evaluated, as it must be, on the "practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar* v. *United States*, 338 U.S. 160, 175 (1949).

The time of arrest here can be accurately fixed when appellant and the three other occupants were ordered from their parked vehicle by the arresting officers, at least one of whom had his service revolver drawn, and consequently subjected them to their imposition of custody and succeeding search (Tr. 9-13, 19-21, 27, 29-33, 38-40, 44-46, 53-54). *Henry* v. *United States*, 361 U.S. 98 (1959); *Seals* v. *United States*, 117 U.S. App. D.C. 79, 325 F.2d 1006 (1963), *cert. denied*, 376 U.S. 964 (1964); *Coleman* v. *United States*, 111 U.S. App. D.C. 210, 295 F.2d 555 (1961) (*en banc*), *cert. denied*, 369 U.S. 813 (1962). As we have previously indicated, the officers arrested the occupants on the basis of the report of the robbery and the information that at least one of the participants was carrying a dangerous weapon. Moreover, the limited description of the perpetrators in conjunction with the accurate information concerning the getaway car and its presence at the registered address a relatively short time after the commission of the crime, as well as the possibility of imminent escape, provided adequate information for a reasonable, cautious and prudent peace officer, in light of his training and experience, to believe that the occupants had committed the offense. *Cf. McCray* v. *Illinois*, 386 U.S. 300, 304 (1967); *Brinegar* v. *United States*, *supra*, 338 U.S. at 175-176; *Bell* v. *United States*, 102 U.S. App. D.C. 383, 387, 254 F.2d 82, 86, *cert. denied*, 358 U.S. 885 (1958).

The fact that there were four negro males in the suspected vehicle rather than two was insignificant, at best, in light of the vague description of the participants and the more precise data concerning the getaway vehicle. See *Brown* v. *United States*, 125 U.S. App. D.C. 43, 356 F.2d

976 (1966); *United States* v. *La Vallee*, 367 F.2d 351 (C.A. 2, 1966); *Bailey* v. *United States*, —— U.S. App. D.C. ——, 389 F.2d 305 (1967).[6]

Having validly arrested appellant and in light of their knowledge that the robbery was perpetrated at gun point, the arresting officers were entitled to search him in order to seize any weapons that might be used to effectuate an escape or jeopardize their own safety. *Peters* v. *New York*, 392 U.S. 40 (1968); *United States* v. *Rabinowitz*, 339 U.S. 56 (1950); *Harris* v. *United States*, 331 U.S. 145 (1947). Accordingly, the search of appellant's person incidental to that arrest was wholly lawful, *Peters* v. *New York*, *supra*; *Draper* v. *United States*, 358 U.S. 307, 311 (1958); *Martin* v. *United States*, 301 F.2d 81 (C.A. 5, 1962); *Elkanich* v. *United States*, 327 F.2d 417 (C.A. 9), *cert. denied*, 377 U.S. 917 (1964), and the items seized at that time were properly introduced into evidence.

Whether the issue is narrowly drawn in terms of "probable cause" and "arrest" principles or more appropriately framed in terms of reasonable police action, appellant's Fourth Amendment claim should be rejected.

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[6] Appellant's attempt to support his argument for lack of probable cause by referring this Court to the concurring opinion by Judge Leventhall in *Bailey* v. *United States*, *supra*, is misplaced. That opinion is concerned primarily with the problem of ascertaining the exact moment that an arrest was occasioned and not directly with the problem broached by appellant in the instant case.

CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment of the District Court should be affirmed.

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